

REMARKS

Amendments to claims 1, 15, 23, 30, 56, 75 are for the purpose of clarifying what Applicant regards as the invention. Amendments to claims 10, 11, 17, 18, 27, 28, 57-60, 80, and 81-91 are to bring these claim into conformity with the language of their respective base claim(s). No new matter has been added.

I. Claim Rejections under 35 U.S.C. § 101

Applicant wishes to thank the Examiner for withdrawing the § 101 rejection.

II. Claim Rejections under 35 U.S.C. § 102

Claims 1-32, 53-56, 66-67, 75, and 80-91 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by US 5997883 (Epstein). Applicant respectfully notes that in order to sustain a claim rejection under § 102, each of the claimed elements must be found, either expressly or inherently, in the cited reference.

Claims 1, 15, and 23

Claim 1 has been amended to recite collecting data samples representative of a *breathing* motion of an object (Emphasis Added). Claims 15 and 23 have been amended to recite similar limitations. Epstein does not disclose or suggest data samples that represent *breathing* motion. Rather, Epstein is directed to reconstructing images based on a cardiac phase, which is not a breathing motion. For at least the foregoing reasons, claims 1, 15, and 23, and their respective dependent claims, are believed allowable over Epstein.

In the event that the Examiner is inclined to formulate a § 103 rejection based on Epstein, Applicant respectfully notes that a prima facie case of a § 103 rejection cannot be sustained

based at least in part on Epstein. This is because Epstein is specifically directed to dealing with heart motion, not breathing motion. A cardiac motion is significantly different from a breathing motion. In particular, cardiac motion is relatively predictable, while breathing motion is not. This is due to the fact that a patient may cough, and that the patient may change his/her breathing pattern from cycle-to-cycle, etc. These problems are unique to breathing motion, and are not present in cardiac motion. Thus, one skilled in the art who is interested in addressing these problems associated with breathing motion, would not look to Epstein for its teaching.

Claims 30, 56, and 75

Claim 30 has been amended to recite associating the image data with one or more phases of a *breathing* motion (Emphasis Added). Claim 56 has been amended to recite binning the image data using a processor based on a characteristic of a *breathing* motion of the object (Emphasis Added). Claim 75 has been amended to recite sorting the image data using a processor based on a portion of a cycle of a *breathing* motion of the object at which the image data are acquired (Emphasis Added).

As discussed, Epstein does not disclose breathing motion. Thus, Epstein also does not disclose or suggest associating image data with a phase of a breathing motion (as recited in claim 30), binning image data based on a characteristic of a breathing motion (as recited in claim 56), and sorting image data based on a portion of a cycle of a breathing motion (as recited in claim 75). For at least the foregoing reasons, claims 30, 56, and 75, and their respective dependent claims, are believed allowable over Epstein.

Also as discussed, a prima facie case of a § 103 rejection cannot be sustained based at least in part on Epstein. This is because Epstein is specifically directed to dealing with heart

motion, which is significantly different from breathing motion, and Epstein does not address the problems associated with breathing motion.

Claims 87, 89, and 91

Claims 87, 89, and 91 recite that the breathing motion is controlled by the patient. Epstein also does not disclose or suggest such limitation. Rather, Epstein discloses cardiac motion, which is not capable of being controlled by a patient. Thus, Epstein in fact describes the opposite of the subject matter of claims 87, 89, and 91. For these additional reasons, claims 87, 89, and 91 are believed allowable over Epstein.

According to the Advisory Action, the subject specification allegedly does not describe motion that is controllable by a patient. Applicant respectfully disagrees. The subject specification is replete with description regarding breathing motion, which is well known to be controllable by a person. Thus, Applicant clearly had possession of the claimed subject matter (which is the test for written description) as of the date / priority date of the subject application.

CONCLUSION

If the Examiner has any questions or comments, please contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **VM 03-035-US**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **VM 03-035-US**.

Respectfully submitted,

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